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By electronic delivery to:  
<https://www.fcc.gov>

Secretary Marlene H. Dortch  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Consumers' Research Comment to FCC Pursuant to Section 610 of the Regulatory Flexibility Act**

Dear Secretary Dortch:

Consumers' Research appreciates the opportunity to respond to the Federal Communications Commission's (FCC) request for information regarding Section 610 of the Regulatory Flexibility Act on 47 CFR Part 64—Miscellaneous rules relating to common carriers, Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising. Consumers' Research<sup>1</sup> is a 501(c)(3) educational non-profit advocating for the general interests of consumers. This comment does not represent the views of any affected party or special interest group and is intended to present a consumer-oriented discussion of telemarketing practices and unwanted commercial calls to personal landline and cellular telephones.

**The problem of unwanted commercial calls to residential landlines and cell phones**

The FCC should consider providing consumers stronger protections against unwanted telemarketing calls. New technologies and a near-zero cost of mass calling have upset the current policy balance between telemarketing and consumer protection in favor of telemarketers. The Do Not Call Registry is useful, but new

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<sup>1</sup> Founded in 1929, Consumers' Research is the nation's oldest consumer affairs organization. Consumers' Research aims to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

technologies allow telemarketers to easily evade it by changing or masking their contact numbers.

This problem is extensive and growing. Traditionally concentrated on landlines, unwanted telemarketing calls are now prevalent on cell phones as well. In September, the *Washington Post* reported that a majority of all calls to cell phones are expected to be scam calls by 2019, even when legitimate unwanted calls are omitted.<sup>2</sup>

While consumers have screening methods and other protections available to them, these countermeasures do not address the underlying problem: Consumers using telephone services should not be subjected to a high volume of unwanted commercial calls and should not have to overly burden themselves to avoid such calls. In this case, FCC regulatory action is necessary and appropriate.

### **Proposed remedies**

The FCC should adopt strong, simple requirements for all telemarketing calls to consumer landlines and cellular telephones. Autodialed calls (robocalls) in particular need to be more tightly regulated as consumers usually have no effective way to request removal from an autodialed telephone list.

The FCC should require all autodialed calls, without exception, to include a callback number and, when a call is answered, to make clear immediately what company is responsible for the call. If the autodialed call has a recorded message, the message should, within the first ten seconds, provide the call's recipient a simple way to opt out of any further calls for a substantial period of time (e.g., one year).

To facilitate enforcement, the FCC should require the message be saved for a period of one year on the robocaller's database or tracking system along with a record of the all calls made. The FCC should attach sufficiently significant penalties to each violation to dissuade telemarketers from violating the rules when they might otherwise choose to incur penalty-related fines as a matter of course.

For live telemarketing calls, the FCC should require all callers to provide the name of the company they are representing (i.e., the company that commissioned the call, which may not be the caller's employer) and the number from which they are calling at the beginning of every conversation. Telemarketing companies should

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<sup>2</sup> [https://www.washingtonpost.com/technology/2018/09/19/nearly-half-cellphone-calls-will-be-scams-by-report-says/?noredirect=on&utm\\_term=.ba5ac0158ddd](https://www.washingtonpost.com/technology/2018/09/19/nearly-half-cellphone-calls-will-be-scams-by-report-says/?noredirect=on&utm_term=.ba5ac0158ddd)

honor live opt-out requests for the same duration as message opt-outs. They should also be required to keep logs of opt-outs.

If, once answered, an autodialed call brings on a live representative, the same rules for live telemarketing calls should apply. If a long delay, as defined by the FCC, elapses before a representative arrives, then the requirements for autodialed calls utilizing recorded messages should apply.

Finally, many robocall recipients hang up as soon as they recognize a robocall. Hanging up on a particular number multiple times, as defined by the FCC, should be considered equivalent to an affirmative opt-out. Under this proposal, the FCC would require telemarketers to track calls and automatically remove consumers from their call lists when consumers reach the hang-up limit.

### **Exception to proposed telemarketing rules**

Although current exceptions to the Do Not Call Registry are broad, there are legitimate reasons certain autodialed calls should be exempted from these proposed rules. First, businesses with established, current relationships with customers should be allowed to use autodialing to notify customers of order statuses (e.g., pharmacy prescriptions) and other matters related to their business relationship (e.g., appointment confirmations). Such exceptions should not, however, be extended to affiliate companies unless the customer explicitly opts-in to such calls. Secondly, bona fide emergency notifications, such as notifications of possible utility outages, should also be exempted from autodialing restrictions.

### **Effectiveness of proposed remedies**

While the proposed requirements could substantially reduce unwanted commercial calls, especially autodialed calls, they will not prevent calls from foreign locations or from those who choose to operate illegally. They should, however, make enforcement easier. Any domestic, commercial originator making a large number of calls that is unable to produce the required call logs would be in presumptive violation of these rules (unless the originator could establish that its activities did not involve robocalls or that its calls were not part of a for-profit enterprise). Instituting strong consumer-centric domestic regulations on robocalls could also put the United States in a stronger position to leverage the diplomatic means necessary to reduce unwanted commercial calls from foreign originators.

### **Effect on legitimate telemarketing**

Telemarketers can be divided into three categories: (1) those promoting scams; (2) those selling a real product or service who don't allow consumers to opt out of future calls; and (3) those seeking to be responsive to consumer preferences regarding phone contact. The proposed regulations would impose a burden on all three groups of telemarketers, especially those relying extensively on robocalling. Such a burden on the first two categories is a positive good, as it protects the consumer against harassment. For telemarketers falling primarily into the third group, recordkeeping requirements will create additional compliance costs. These telemarketers will, however, benefit from a reduction in solicitations from the first two categories. A significant reduction in unwanted or harassing calls will make consumers less inclined to automatically hang up on robocalls, to opt out of call lists, or to screen all commercial phone calls.

Although the argument that regulation benefits law-abiding businesses is generally overused, it is valid when applied to areas of business, like telemarketing, that are rife with abuse and held in low esteem by the public.

## **Conclusion**

The FCC should develop a Notice of Proposed Rulemaking to end abusive telemarketing practices. In the comment phase of such a proceeding, legitimate telemarketers will have the opportunity to lay out their projected compliance costs and propose any changes that might mitigate those costs without defeating the purpose of the proposal. An Advance Notice of Proposed Rulemaking is appropriate here, as well, as it allows for the incorporation of constructive suggestions and arguments that might lighten the burden of new regulations on legitimate telemarketing businesses.

Though difficult to quantify, the current high volume of unwanted telemarketing calls amounts to a large cost to consumers in time and in the interruption of their daily lives. New regulations are appropriate to reduce this cost.

Sincerely,

A handwritten signature in black ink that reads "John C. Meyer". The signature is written in a cursive, slightly slanted style.

John C. Meyer, Senior Researcher